DECISION MEMORANDUM

TO: **COMMISSIONER KEMPTON**
COMMISSIONER SMITH
COMMISSIONER REDFORD
COMMISSION SECRETARY
COMMISSION STAFF

FROM: **DON HOWELL**
DEPUTY ATTORNEY GENERAL

DATE: **NOVEMBER 23, 2010**

SUBJECT: **IDAHO POWER'S SALE OF SO2 EMISSION ALLOWANCES, CASE NO. IPC-E-10-20**

On June 14, 2010, Idaho Power Company first reported that it has sold (or entered into contracts for the sale of) 10,000 surplus sulfur dioxide (SO2) emission allowances in 2010. The Company reported that it anticipates net proceeds (after deducting brokerage fees of $2,500) of $427,000. On September 7, 2010, the Company filed a second report stating that it sold 4,000 additional credits for $45,000 (after fees of $1,250). On November 12, 2010, the Company filed a third report stating it sold 6,000 additional credits for $71,000 (after fees of $1,250).

In summary, Idaho Power sold 20,000 SO2 credits in calendar year 2010 and received net proceeds of $543,000 (after deducting fees of $5,000). Third Report at 2. Consistent with the Commission's prior Order, the Company proposes to "share" the proceeds 95% to customers and 5% to shareholders. The Company also proposes to use Idaho's current jurisdictional percentage of 94.8% and to use the accounting treatment approved in the Commission's prior Order No. 29852. Application at ¶ 6.

BACKGROUND

A. The SO2 Program

In Order No. 29852 issued August 22, 2005, the Commission granted Idaho Power blanket authority to sell its surplus SO2 emission allowances. Title IV of the Clean Air Act Amendments of 1990 establishes a national program for the reduction of acid rain. 42 U.S.C. §§ 7651, *et seq*. The centerpiece of the acid rain program is the incentive- or market-based "cap and trade" SO2 emission program. Under the cap and trade program, the Environmental Protection

Agency (EPA) sets a cap or ceiling on the total amount of SO2 emissions allowed nationwide. Based on this cap, EPA allocates a certain number of SO2 emission allowances to thermal power plant owners. Each allowance provides the authority to emit one ton of SO2. Order No. 29852 at 1.

Each year a thermal power plant owner must hold sufficient allowances to cover actual SO2 emissions. A thermal power plant owner holding insufficient allowances to cover its annual emissions must purchase additional allowances or it is automatically fined and must surrender future year allowances to cover the shortfall. A thermal power plant holding surplus SO2 allowances in a given year may save the surplus allowances or sell them. SO2 emission allowances are fully marketable commodities and can be traded on the open market or in special EPA-sponsored auctions. Idaho Power has an ownership interest in three thermal power plants in the western United States that receive SO2 allowances from EPA. *Id.*

B. Prior Commission Orders

In October 2005, the Commission initiated a proceeding to determine the appropriate ratemaking treatment of the SO2 proceeds. In March 2006, interested parties stipulated that proceeds from Idaho Power's sale of SO2 allowances should be included in the Company's annual Power Cost Adjustment (PCA) "with 90% of the net proceeds to be passed onto customers, and 10% of the net proceeds to be retained as a shareholder benefit." In Order No. 30041, the Commission approved the stipulation. The Commission found that the PCA "is the logical mechanism to track and distribute proceeds from the sale of excess SO2 allowances." Order No. 30041 at 4.

In Order No. 30715 issued January 9, 2009, the Commission adopted changes to Idaho Power's Power Cost Adjustment (PCA) mechanism. In that Order the Commission adopted a Stipulation executed by parties in Case No. IPC-E-08-19 that agreed to several modifications of the Company's PCA. In particular, the parties agreed and the Commission approved changing the sharing methodology that assigns power purchase costs or benefits to customers and shareholders. "Since inception of the PCA, annual deviations in normal power supply costs have been shared 90%/10% by customers and Company shareholders, respectively." Order No. 30715 at 2. The Commission adopted the parties' recommendation that the sharing percentage should be changed to a 95%/5% sharing percentage for customers and the Company, respectively. *Id.* at 5.

In the Commission's last SO2 Order No. 30790 issued May 1, 2009, the Commission allocated all of the SO2 proceeds to offset the PCA balance. In a previous case, the Commission had used SO2 proceeds to fund a two-year energy education proposal that began at the start of the 2009 school year. Order No. 30790 at 3. In Order No. 30790, the Commission found that "it is not appropriate to set aside additional SO2 proceeds for energy education [programs] until the two-year pilot project has been evaluated." *Id.* The two-year pilot will be completed in June 2011.

STAFF RECOMMENDATION

The Staff has reviewed the Company's SO2 reports. Staff notes there have been three public comments submitted in this case already. The comments suggest that a portion of the SO2 funds be used for the energy education project. Given these three comments, Staff recommends that the SO2 reports be processed under Modified Procedure with a 21-day comment period.

COMMISSION DECISION

Based upon the recommendation of Staff does the Commission wish to process this case under Modified Procedure with a 21-day comment period?

Don Howell
Deputy Attorney General

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